

RIGHT OF BUILDING AND LOAN ASSOCIATION TO PLEDGE ASSETS,
RIGHT TO BORROW MONEY OUTSIDE OF THE STATE OF MISSOURI,
RIGHT TO JOIN FEDERAL HOME LAND BANK.

5594-79-5609 LAW-21

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February 25, 1933

Bureau of Building and Loan Supervision
Jefferson City, Missouri

Dear Sir:

This office acknowledges receipt of your letter dated February 9, 1933, in which you inquire as follows:

- "1. Has a Missouri association the authority to pledge its assets as security for a loan?
2. Has an association the authority to borrow money outside of the State of Missouri and send its assets beyond the border of the State, outside the jurisdiction of this Department and Missouri Courts?
3. Have the officers of Missouri associations the right to join the Federal Home Land Bank and thereby bind members to a joint and several liability that was not contemplated when they became members and without their knowledge and consent?"

The assets of a building and loan association under the laws of Missouri consist of payments on account of stock, interest, premiums, fines and fees, together with the obligations of the shareholders of the association, so that I take it your inquiry number one is whether the obligations of the shareholders of the association may be pledged as security for a loan to the association. Under Sections 5594 and 5597, Laws 1931, pages 149 and 151, loans or advancements made to shareholders must be on a non-negotiable note executed by the shareholder, secured by a first mortgage or deed of trust on real estate and accompanied by a transfer pledge of the shares of stock of the member obtaining the loan or advance. The term non-negotiable as used in the foregoing section has been construed in the case of Layton v. Hough, 169 Missouri Appeal, 213, 229, as follows:

"The statute itself regulating these companies, when providing in what is now section 3392, R. S. 1909, that they are non-negotiable, does no more than put into the statute a construction that had long before been applied by the courts, in holding that notes,

given to these companies, are not commercial paper. (See Sappington v, Aetna Loan Co., supra). By the statute it is provided, that "for every loan or advance made as aforesaid, a non-negotiable note or a bond secured by first mortgage or deed of trust on real estate shall be given, accompanied by a transfer and pledge of the shares of stock of the member or members so obtaining a loan or advance. Said shares so transferred and pledged shall be held by (the) corporation as additional or collateral security for the performance of the agreements, covenants and conditions of said note or bond and mortgage or deed of trust". As we construe this term "non-negotiable", as applied to those building and loan companies, it means non-assignable".

The notes of the shareholders would not have validity as pledged assets unless such notes were assigned as collateral security. Under the above holding we think the notes would not be assignable for any purpose and therefore answer your inquiry number one in the negative.

Section 5607 Laws 1931, page 156, authorizes a building and loan association if so provided in its by-laws, to borrow money for certain purposes, so that in the first place whether an association is authorized to borrow money under any circumstances depends on whether or not such authority is given by the by-laws. While we do not find any adjudications on the subject, no reason appears if an association has authority to borrow money why it could not borrow money beyond as well as in the State of Missouri. The answer to your inquiry number one answers the remainder of your inquiry number two.

As to your inquiry number three, it is well settled and needs no citation that the obligations of contracts can not be impaired by acts done or even Legislation enacted subsequent to the entering into of the contract. Therefore unless the contract provides that an association may join the Federal Home Land Bank, or unless the law gave such right at the time the contract was made, then your inquiry number three would be answered in the negative. You do not submit a form of contract nor do you state the date when the contract inquired about was entered into, therefore we are unable to further answer your inquiry number three.

Very truly yours,

GILBERT LAMB
Assistant Attorney General.

APPROVED:

Attorney General.

GL:LC